

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person of G.D.

SAN DIEGO COUNTY HEALTH &
HUMAN SERVICES AGENCY,

Petitioner and Respondent,

v.

G.D.

Objector and Appellant.

D052806

(Super. Ct. No. MH102161)

APPEAL from a judgment of the Superior Court of San Diego County, Robert P. Ahern, Judge. Affirmed.

G.D. appeals a judgment establishing a conservatorship of the person for her under the Lanterman-Petris-Short Act (LPS Act). (Welf. & Inst. Code, § 5000 et seq.)¹ G.D.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise specified.

challenges the sufficiency of the evidence to support the jury's finding she was gravely disabled within the meaning of the LPS Act. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2008 the public conservator of the County of San Diego filed a petition for the establishment of a conservatorship of the person for G.D. under the LPS Act on the ground she was gravely disabled. The petition was supported by a recommendation by Yashwant Chaudhri, M.D., which stated G.D. suffered from chronic paranoid schizophrenia and she was unable to devise a reasonable plan for providing herself with food or shelter. In her response, G.D. admitted to having a mental disorder, but denied it prevented her from providing for her basic needs "with or without the assistance of a willing and able third person."

In March 2008 a jury trial was held on the issue of whether G.D. was gravely disabled. The parties stipulated to G.D.'s mental illness.

Dr. Chaudhri testified as a treating physician and as an expert witness in the field of psychiatry. Dr. Chaudhri had treated G.D. two or three times, most recently between January 18 and February 11, 2008, at Alvarado Parkway Institute, an inpatient treatment facility. He recommended a conservatorship because "[d]espite her ambitions to be independent, she was not able to outline a reasonable plan . . . to seek treatment consistently, to seek utilization of resources in the community consistently, becoming homeless." Dr. Chaudhri testified that G.D. lacked insight into her mental illness, and she was "withdrawn, internally preoccupied, expressing delusional thoughts, experiencing auditory hallucinations, experiencing visual hallucinations, and . . .

unpredictable in her behaviors." G.D. told Dr. Chaudhri she had heard voices since the age of 17, some 14 years.

Dr. Chaudhri also testified the prognosis for a patient with schizophrenia "would be variable" depending on the patient's compliance with the treatment plan, and historically G.D. did not take her medications as prescribed. "If consistent, prognosis would be better, if inconsistent or abandoned, prognosis would be grave, fatal." Based on his expertise, Dr. Chaudhri testified that out of an inpatient setting "she's clearly significantly compromised to provide treatment for herself consistently, to provide for herself, shelter and food."

Dr. Chaudhri testified that G.D. was currently residing at Cresta Loma, a locked treatment facility. He believed she could meet her needs for food, clothing and shelter outside such a setting only if she was consistent with treatment, and she currently lacked the ability to voluntarily seek treatment. He added that her condition would make it difficult for her to deal with apartment managers or otherwise maintain a residence or to manage her finances. Dr. Chaudhri asked G.D. during his last interview with her on February 11, 2008, how she would provide food for herself, and she said, "I get to be provided for one way or the other almost all the time."

G.D.'s brother, Dylen K., testified she had social security income and at her request he had been receiving her monthly checks for about a year. Dylen would cash the checks for her benefit, but he frequently had no way to reach her. She sporadically contacted him, and he had delivered money to her at a homeless shelter where he observed she "really didn't seem like she [was] with it" and "it smelled like she didn't take

a shower for a while." On one occasion Dylen gave G.D. \$60, and the next day she asked him for more money because she spent the entire amount on perishable food.

Dylen also testified that when he would drive G.D. somewhere in his car, she would be happy one moment and crying or screaming the next. One time she exited his car, began hitting herself and dropped to the ground. Another time she urinated in his car. He testified that once at a restaurant G.D. "kind of looked at the food and just . . . dazed off a little bit. I asked her why she wasn't eating. She just didn't say anything, really. She started eating and then just got mad and spit out everything and threw it on the ground. And she walked outside with the plate and threw it against the wall."

Based on his relationship and experiences with G.D., Dylen believed she could not provide food, clothing or shelter for herself "because half the time she doesn't even know what she's doing." As to food, he testified, "when I see her . . . get food, she really doesn't necessarily know what she's ordering. . . . She will order food that she can eat for a week straight, it will be . . . fast food that goes bad in a day." As to clothes, he testified, "I have seen her wear the same clothes from one month to another. They smell, they are ragged. They are stained all up and down, it's obvious she's urinated on them." As to shelter, he testified, "I have gotten her a place, but she doesn't stay there."

G.D.'s sister, Michael B., testified G.D. came to stay with her in Idaho in 2004, but the visit only lasted a few weeks. At some point G.D. told Michael she had not taken her medications for at least two weeks because she did not like the way they made her feel. G.D. reported that she had given several thousand dollars away to various people. In the previous three years there were approximately five 4-month periods in which Michael

could not locate G.D. Based on her relationship and experiences with G.D., Michael believed she could not provide food, clothing or shelter for herself.

Peggy W., G.D.'s mother, testified that about seven to 10 years previously G.D. said she was hearing voices, including the voices of God and "Michael the archangel." Peggy said she knew G.D. had not had consistent, stable housing over the last several years and there were times when Peggy was unaware of where G.D. was living or how to reach her. In August 2007 G.D. asked to live with Peggy. Peggy agreed, and when she picked up G.D., her hair looked like "a rat's nest" and she "had men's shoes on that were probably about a size and a half larger than what she normally wears. She had pants that were exceptionally large. . . . She smelled like a garbage can." G.D. told Peggy "it was rough on the streets, that she doesn't want to go back there."

Further, Peggy testified she would try to convince G.D. to take her medication, but had no success, and sometimes G.D. denied needing medication. After G.D. had been with Peggy for about a week, a neighbor called Peggy at work to report that G.D. was outside crying. Peggy took her to a hospital where she stayed for several weeks.

Additionally, Peggy testified that about two years earlier, G.D. received a lump sum social security payment of between \$24,000 and \$27,000. She gave her uncle a few thousand dollars, gave some additional money away and bought her nephew a car. Based on her relationship and experiences with G.D., Peggy believed she cannot provide food, clothing and shelter for herself.

G.D.'s aunt, Judy W., testified that G.D. reported hearing the voices of God, Jesus or Satan. She also testified that during the previous five years G.D. had "been on the

streets a lot" and there were times Judy was unaware of G.D.'s whereabouts. Judy explained that G.D. does not always eat or dress well, and on occasions she would go nude indoors when staying with others or wear clothes soiled with feces and urine. Judy also testified that when G.D. received the large settlement, she "gave most of it away" because "Jesus told her to." Additionally, Judy testified, "I'm always telling her to take her medication when I see her because she tells me she hasn't taken it." Like the other family members, based on her observations she felt G.D. was incapable of providing food, clothing and shelter for herself.

G.D. testified she hears voices and before she began living at Cresta Loma there were times she forgot to take her medicine. She explained that when she did not take her medication, "I begin to slip" and "all my psychotic episodes come back up." During psychotic episodes, "I either request to go to the hospital or somebody around me thinks I should to the hospital, so I go." She agreed with Dylen's testimony about the incident in which she got out of his car and began hitting herself. She testified she did that because she heard voices and "it gets to a point when I can't take it anymore."

G.D. admitted there were times she did not provide Dylen with any way to get her the social security income because "I would be out on the streets." She said she was last homeless between January and May 2007. Before that, she stayed with her uncle for a year, but he made her move out because of her psychotic episodes. She lived with a friend for about a month, but had to leave because she had a psychotic episode and "I punched a window out and they called . . . the police." When homeless, she "didn't use money" and would eat at a homeless shelter or "people would give you food on the

street." She received a \$24,000 social security payment in September 2006, she gave a friend \$500 and she spent the remainder on remodeling her uncle's trailer, where she was living, and on cars for her uncle and her cousin.

Since she had been at Cresta Loma and on her medication she had not had a psychotic episode.

Further, G.D. testified she could live "at Carol's or Fancorp" if she left Cresta Loma, she knew how to shop for groceries, use a stove to cook food and a washing machine to wash her clothes. Her treatment coordinator would help her find a doctor and she would continue to take her medication.

G.D.'s expert witness, Meredith Friedman, a forensic psychologist, examined her for one hour and 15 minutes a few days before trial. Dr. Friedman testified "she was logical and the thinking was goal directed and she expressed appropriate plans for herself and an appropriate realization that she needed to stay on medication" and "needed to live in a setting where there would be some supervision where her medication would be provided for her." Dr. Friedman testified that if G.D. found a place to live that would provide her meals and set out her medication, she would not be gravely disabled.

Dr. Friedman believed G.D. was in "partial remission" for her mental disorder, and she "has some residual symptoms of schizophrenia that may not necessitate her residing in the facility that she's currently in." Dr. Friedman conceded she is not qualified to make a medical diagnosis, and had only seen G.D. during her stay in a facility where her needs for food, shelter and medication were being met.

The jury unanimously found G.D. was gravely disabled within the meaning of the LPS Act. The court issued a judgment that appointed the public conservator as the conservator of G.D.'s person for one year, found the least restrictive placement available and necessary to achieve the purpose of treatment was a locked facility, and set forth the respective rights of G.D. and the conservator.

DISCUSSION

I

The LPS Act "governs the involuntary treatment of the mentally ill in California. Enacted by the Legislature in 1967, the act includes among its goals ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program." (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008-1009.)

The LPS Act "authorizes the appointment of a conservator for up to one year for a person determined to be gravely disabled as a result of a mental disorder and unable or unwilling to accept voluntary treatment. [Citation.] The proposed conservatee is entitled to demand a jury trial on the issue of his or her grave disability, and has a right to counsel at trial, appointed if necessary. [Citations.] The party seeking imposition of the conservatorship must prove the proposed conservatee's grave disability beyond a reasonable doubt and the verdict must be issued by a unanimous jury." (*Conservatorship*

of *Susan T.*, *supra*, 8 Cal.4th at p. 1009, fn. omitted.) The LPS Act defines the term "gravely disabled" as "unable to provide for . . . basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).) A person must be " 'presently' gravely disabled" for the imposition of a conservatorship of the person. (See *Conservatorship of Murphy* (1982) 134 Cal.App.3d 15, 18-19 (*Murphy*), italics added.)

G.D. challenges the sufficiency of the evidence to support the jury's finding she was gravely disabled. On appeal, we review the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence, meaning evidence that is reasonable, credible, and of solid value, to support the verdict. (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577(*Walker*).) "Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom." (*Ibid.*) "The focus is on the quality, rather than the quantity, of the evidence. 'Very little solid evidence may be "substantial," while a lot of extremely weak evidence may be "insubstantial." ' ' ' (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

II

G.D. asserts the evidence was lacking because her conservatorship may not be based on the potential of becoming gravely disabled in the future if she does not take her medications after being released from the locked facility.

G.D. cites *Murphy*, *supra*, 134 Cal.App.3d 15, in which the court reversed the granting of a petition for the public guardian's reappointment as conservator based on the conservatee's alcoholism. The two expert witnesses testified the conservatee was presently able to meet his needs for food, clothing and shelter, but they and the court

determined he was gravely disabled because of a " 'likelihood' that if he were released he would at some future time return to the use of alcohol." (*Id.* at pp. 18-19.)

G.D. also cites *Conservator of Benvenuto* (1986) 180 Cal.App.3d 1030 (*Benvenuto*), in which a physician testified the conservatee suffered from schizophrenia that was in partial remission because of medication, and the medication gave him the present ability to provide for his food, clothing and shelter needs. The doctor believed, however, that if the conservatee went to live with his mother, as he proposed, "he would be likely to regress and become gravely disabled in a fairly short period of time" because of his propensity not to take his medication. (*Id.* at p. 1033.) Relying on its decision in *Murphy, supra*, 134 Cal.App.3d 15, the court reversed the order for the reappointment of a conservator based on the lack of evidence of present grave disability, and for the additional reason that the conservatee was denied a jury trial on the issue. (*Benvenuto, supra*, at p. 1034, 1039.)

Here, G.D. agreed to the following jury instruction, which is taken from CACI No. 4002: "The term 'gravely disabled' means that a person is presently unable to provide for his or her basic needs for food, clothing, or shelter because of a mental disorder. [¶] Psychosis, bizarre or eccentric behavior, delusions, hallucinations are not enough, by themselves, to find that [G.D.] is gravely disabled. She must be unable to provide for the basic needs for food, clothing or shelter because of a mental disorder. [¶] If you find [G.D.] will not take her prescribed medication, [and] that a mental disorder makes her unable to provide for her basic needs for food, clothing or shelter without such medication, then you may conclude [G.D.] is presently gravely disabled. [¶] *In*

determining whether [G.D.] is presently gravely disabled, you may consider evidence that she did not take prescribed medication in the past. You may also consider evidence of her lack of insight into her mental condition." (Italics added.)

CACI No. 4002 is based on *Walker, supra*, 206 Cal.App.3d 1572, in which the conservatee argued that in violation of *Murphy* and *Benvenuto*, the court renewed his conservatorship because of the likelihood he would stop taking his medication if he were released, and thus become gravely disabled in the future. The appellate court distinguished *Murphy* and *Benvenuto* on the ground that in *Walker*, a physician testified appellant "remained gravely disabled because he had *no insight* into his mental illness. He did not believe he was ill, nor did he believe he needed medication. The evidence was undisputed that without medication, appellant could not provide for himself." (*Walker, supra*, at p. 1577.) The court found substantial evidence supported the court's ruling. (*Ibid.*)

In *Conservatorship of Guerrero* (1999) 69 Cal.App.4th 442, 445 (*Guerrero*), this court approved a jury instruction similar to the one used here: " 'In determining whether Respondent is presently gravely disabled, you may consider evidence of his past failure to take mental health medication when prescribed, and you may consider evidence of Respondent's lack of insight into his mental condition. [¶] If you find Respondent will not take his medication unless required to do so and that a mental disorder makes him unable to provide for his basic personal needs for food, clothing or shelter without such medication, then you may conclude Respondent is gravely disabled.' " In *Guerrero*, the evidence showed the conservatee had a history of not taking his medication when

unsupervised. (*Id.* at pp. 446-447.) G.D. cites *Walker* and *Guerrero*, but she does not discuss their holdings. Further, G.D. ignores the jury instruction to which she agreed.

We conclude substantial evidence supports the jury's finding on the elements of the jury instruction. There was ample evidence from Dr. Chaudhri that G.D. lacked insight into her mental illness, and the evidence from him, G.D.'s family and G.D. herself that, considered together, showed she had a history of not taking her medications, she would likely not take her medications unless required to do so, and without the medications she could not provide food, clothing or shelter for herself.

G.D. asserts the evidence was insufficient because there was no evidence she "was suffering from malnutrition, overexposure, or any other sign of poor health or neglect." The jury instruction, however, did not base a finding of present grave disability on any of those criteria.

G.D. contends Dr. Chaudhri's testimony lacks value because he did not disclose the factual basis for it. G.D. cites *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135, for the proposition that "[w]here an expert bases his conclusion upon assumptions which are not supported by the record . . . then his conclusion has no evidentiary value." G.D. cites to a question as to whether Dr. Chaudhri knew if she "would be able to provide a source of income for herself," and his response, "if she is consistent with treatment, I hope she does, I'm pretty confident she should be able to," but if she is not consistent with treatment "then it's not possible." Other evidence showed G.D. received social security income. Dr. Chaudhri's response, even if mistaken, is immaterial in light of evidence the social security checks went to G.D.'s brother, he often

had no idea where to find her, and she was unable to manage money. Overall, Dr. Chaudhri's testimony was competent because it was based on his treatment and observations of G.D. for more than three weeks, ending approximately one month before trial began, and he had also treated her on one or two previous occasions.

Additionally, G.D. complains that the jury was not persuaded by Dr. Friedman's testimony, since she evaluated G.D. nearer the time of trial than did Dr. Chaudhri. Dr. Friedman, however, evaluated G.D. only after she had been in a locked facility for many weeks, where she was required to take her medication and her needs for food, clothing and shelter were met. The jury was entitled to give the evidence the weight it desired, and it is not our province to reweigh the evidence or assess the credibility of witnesses. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) Moreover, even Dr. Friedman conceded G.D. would not do well in an unsupervised setting and she needed to have food and medication provided.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

McINTYRE, J.